



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, DC 20590

March 31, 2014

The Honorable Joseph R. Biden, Jr.  
President of the Senate  
Washington, DC 20510

Dear Mr. President:

I am pleased to submit the enclosed draft bill, entitled the "Federal Aviation Insurance Reauthorization Act of 2014," for your consideration. This proposal is intended to reform the current Aviation War Risk Insurance Program. Enclosed with the proposal is a sectional analysis that describes the proposed legislation.

By way of background, in the aftermath of the September 11, 2001, attacks on the United States, the commercial aviation insurance market experienced a significant market failure. U.S. air carriers were unable to obtain the necessary terrorism and war risk insurance to operate on reasonable terms. Consequently, in the months following the attacks, Congress enacted legislation requiring the Secretary of Transportation to insure U.S. air carriers for war and terrorism risks, but established limits on the amount of premiums the Secretary could charge.

It has now been more than a decade since the attacks, and the commercial aviation insurance marketplace has stabilized. The market currently provides the vast majority of the world's airlines with their aviation war risk coverage. Furthermore, commercial capital in the aviation insurance marketplace is robust, and premiums have returned to levels below those paid by air carriers prior to September 11, 2001.

A further extension of the requirement for the Administration to provide all terrorism and war risk insurance to U.S. carriers is not prudent in these austere fiscal times. The "cap" on premiums imposed under the current legislation results in the U.S. Government assuming financial risks that are ultimately borne by U.S. taxpayers. The Congressional Budget Office has determined the estimated cost to the U.S. Government associated with the most recent 5-year extension of the existing legislation to be more than \$1 billion over 10 years.

The legislative proposal that the Administration is transmitting to the Congress returns U.S. air carriers to the commercial aviation insurance market for most of their terrorism and war risk insurance coverage. However, the U.S. Government will continue to provide coverage for losses associated with terrorist attacks involving the use of nuclear, bio-chemical, or radioactive (NBCR) weapons. This coverage is currently provided under existing policies and is not commercially available. Under the proposal, the Administration will charge a premium commensurate with the financial risk being assumed for the NBCR coverage, thereby eliminating or significantly reducing future costs as determined by the Congressional Budget Office.

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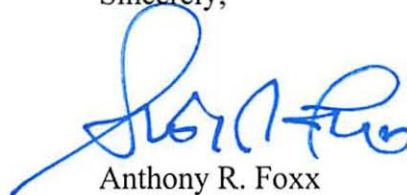
Importantly, the proposal will also allow the Administration to react immediately to future market failures, if any, by providing the Secretary of Transportation with authority to provide full coverage for 90 days in the event of a market failure similar to the one experienced immediately following the attacks of September 11, 2001. This "market stabilization" proviso mitigates air carrier concerns about not being able to maintain war risk insurance coverage in the aftermath of another major terrorist attack. The Secretary of Transportation may provide coverage for a longer period of time if Congress extends the timeframe for full coverage within the first 90 days following any such attack.

Finally, the legislative proposal will extend indefinitely, without change, the "Non-Premium War Risk Insurance Program" that ensures air carriers can obtain the necessary insurance to operate under Department of Defense contracts in support of national defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this legislative proposal for the consideration of Congress, and that its enactment would be in accord with the program of the President.

A similar letter has been sent to the Speaker of the House of Representatives. If I can provide further information or assistance, please feel free to call me.

Sincerely,

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Anthony R. Foxx

Enclosures





THE SECRETARY OF TRANSPORTATION  
WASHINGTON, DC 20590

March 31, 2014

The Honorable John Boehner  
Speaker of the House of Representatives  
Washington, DC 20515

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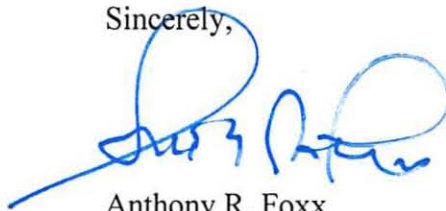
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Sincerely,

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Anthony R. Foxx

Enclosures

## **A BILL**

To amend title 49, United States Code, to provide for indemnifying air carriers and for issuing temporary aviation insurance.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “Federal Aviation Insurance Reauthorization Act of 2014”.

### **SEC. 2. AMENDMENTS TO CHAPTER 443 OF TITLE 49, UNITED STATES CODE.**

Chapter 443 of title 49, U.S. Code, is amended to read as follows —

#### **“Sec. 44301. Definitions**

“In this chapter —

“(1) “aircraft manufacturer” means any company or other business entity, the majority ownership and control of which is by United States citizens, that manufactures aircraft or aircraft engines.

“(2) “American aircraft” means —

“(A) a civil aircraft of the United States; and

“(B) an aircraft owned or chartered by, or made available to —

“(i) the United States Government; or

“(ii) a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of the State, territory, or possession.

“(2) “American operator” means an air operator who is or which is a citizen of the United States.

“(3) “Insurance carrier” means any company regularly engaged in the business of providing aviation insurance. The term includes mutual or stock insurance companies, reciprocal insurance associations, and groups of insurance companies.

“(4) Any reference to “insurance” or “reinsurance” under this chapter shall be deemed to refer only to the following —

“(A) reinsurance of an indemnification contract, under section 44302 of this chapter;

“(B) temporary premium insurance or reinsurance under to section 44303 of this chapter; or

“(C) non-premium insurance or reinsurance under section 44305 of this chapter;

as such shall relate exclusively to coverage for loss or damage arising out of any risk from the operation of an American aircraft or a foreign aircraft, and as such risk may be further defined in the indemnification contract or policy of insurance or reinsurance.

“(5) Except as otherwise stated in this chapter, “Secretary” means the Secretary of Transportation.

#### **“Sec. 44302. Indemnification**

“(a) In General.—Subject to the conditions set forth in this section, on or after October 1, 2014, the Secretary may issue a contract to indemnify an aircraft manufacturer or an American operator of an American aircraft or of a foreign-flag aircraft against losses caused by —

“(1) any hostile detonation, discharge, or ignition whether aboard or directed at an aircraft, that —

“(A) employs nuclear fission or fusion, or any combination thereof;

“(B) disseminates a substantial amount of radioactive material; or

“(C) emits an electromagnetic pulse; or

“(2) any hostile use, whether aboard or directed at an aircraft, of toxic or pathogenic chemical, biological, or radioactive material that contaminates a person, an aircraft, or an area.

“(b) Indemnification Contract.—Such contract of indemnification may be issued only to:

“(1) an air carrier holding a premium policy issued under this chapter, which policy was in effect on the date of enactment of this section: or

“(2) an American air carrier not holding such a policy, but regularly providing scheduled

passenger or cargo service.

“(c) Amount of Indemnification.—The amount of indemnification provided under any indemnification contract shall cover from the first dollar of loss caused by any of the perils referred to in paragraphs (a)(1) or (2), above, and may not exceed the sum of \$2,000,000,000 plus the aggregate third party war risk liability limit as in effect in the operator’s commercial insurance coverage when issued for its current coverage period. If the operator is covered by more than one such policy, the term “aggregate third party war risk liability limit” shall be deemed aggregated over all such policies.

“(d) Amount Charged.—The Secretary must charge an amount, based on consideration of the risk involved for such contract, to be paid with the application referred to in subsection (b), above. Amounts collected from all such contracts shall be sufficient to cover anticipated claims and other expenses and shall be credited to the revolving fund established under section 44308 of this Chapter. Section 9701 of title 31 shall not apply to such premiums or administrative fees.

“(e) Reinsurance.—The Secretary may reinsure with, or transfer to, any insurance carrier, any contract of indemnification issued or to be issued under this section.

#### **“Sec. 44303. Temporary insurance**

“(a) In General.—The Secretary may issue on or after October 1, 2014 temporary premium insurance or reinsurance under this chapter. Such insurance or reinsurance may —

“(1) be issued only to:

“(A) an air carrier holding a premium policy issued under this chapter, which policy was in effect on the date of enactment of this section:

“(B) an American air carrier not holding such policy, but regularly providing scheduled passenger or cargo service; or

“(C) an aircraft manufacturer.

“(2) cover a period of not to exceed 90 days, unless such period is extended by a law enacted after the date of enactment of this section;

“(3) not take effect unless:

“(A) the aircraft manufacturer’s or air carrier’s commercial war risk insurer unilaterally terminates the aircraft manufacturer’s or air carrier’s liability coverage, whether pursuant to notice under to the policy or under any endorsement thereto, or

pursuant to an automatic termination provision in the policy or in any endorsement thereto; and

“(B) the Secretary has determined that the continued operation of the aircraft manufacturer or aircraft to be insured or reinsured is necessary in the interest of air commerce, national security, or to carry out the foreign policy of the United States Government; and

“(4) cover hull, comprehensive, and third party liability risks.

“(b) Premium.—Except as provided under subsection (c), the premium for such insurance or reinsurance shall be calculated as follows: the generally applicable premium provisions of policies issued under this chapter as such policies and chapter were in effect on September 30, 2014, shall apply, but without regard to any provision therein limiting the premium pursuant to 49 U.S.C. § 44302(f)(2)(A), as such provision was in effect on September 30, 2014; and, to the extent that the calculation depends on a coverage limit —

“(1) an air carrier covered by such a policy on the date of enactment of this section may automatically obtain coverage limits not to exceed those specified therein; otherwise the air carrier may request higher coverage limits;

“(2) an air carrier not then so covered may request coverage limits; and

“(3) the approval of coverage limits requested under this section shall not be unreasonably withheld, considering the air carrier’s commercial insurance coverage as in effect immediately preceding its termination.

“(c) Premium for Aircraft Manufacturers.—For aircraft manufacturers, the premium for such insurance or reinsurance shall be at a prorated amount equivalent to the premium in the terminated commercial policy

#### **“Sec. 44304. Insurance coverage**

“The Secretary may provide insurance and reinsurance coverage under section 44302 and section 44303 of this Chapter, including, but not limited to, for the following:

“(1) Property transported or to be transported on aircraft, including--

“(A) shipments by express or registered mail;

“(B) property owned by citizens or residents of the United States;

“(C) property —



“(i) imported to, or exported from, the United States; and

“(ii) bought or sold by a citizen or resident of the United States under a contract putting the risk of loss or obligation to provide insurance against risk of loss on the citizen or resident; and

“(D) property transported between —

“(i) a place in a State or the District of Columbia and a place in a territory or possession of the United States;

“(ii) place in a territory or possession of the United States and a place in another territory or possession of the United States; or

“(iii) two places in the same State, territory, or possession of the United States.

“(2) The personal effects and baggage of officers and members of the crew of an aircraft and of other individuals employed or transported on that aircraft;

“(3) Officers and members of the crew of an aircraft and other individuals employed or transported on that aircraft against loss of life, injury, or detention;

“(4) Statutory or contractual obligations or other liabilities, customarily covered by insurance, of an aircraft or of the owner or operator of that aircraft; and

“(5) Loss or damage of an aircraft manufacturer resulting from operation of an aircraft by an air carrier.

#### **“Sec. 44305. Insuring United States Government property**

(a) In General. — With the approval of the President, a department, agency, or instrumentality of the United States Government may obtain —

“(1) insurance under this chapter, including insurance for risks from operating an aircraft in intrastate or interstate or foreign air commerce, but not including insurance on valuables subject to sections 17302 and 17303 of title 40; and

“(2) insurance for risks arising from providing goods or services directly related to and necessary for operating an aircraft covered by insurance obtained under clause (1) of this subsection if the aircraft is operated —

“(A) in carrying out a contract of the department, agency, or instrumentality; or

“(B) to transport military forces or materiel on behalf of the United States under an agreement between the Government and the government of a foreign country.

“(b) Premium Waivers and Indemnification. — With the approval required under subsection (a) of this section, the Secretary may provide the insurance without premium at the request of the Secretary of Defense or the head of a department, agency, or instrumentality designated by the President when the Secretary of Defense or such head agrees to indemnify the Secretary of Transportation against all losses covered by the insurance. The Secretary of Defense and any designated head may make indemnity agreements with the Secretary of Transportation under this section. If such an agreement is countersigned by the President or the President's designee, the agreement shall constitute a determination that continuation of the aircraft operations to which the agreement applies is necessary in the interest of national security or to carry out the foreign policy of the United States and additional approvals are not required.

#### **“Sec. 44306. Reinsurance**

“To the extent the Secretary is authorized to provide insurance under this chapter, the Secretary may reinsure any part of the insurance provided by an insurance carrier. The Secretary may reinsure with, transfer to, or transfer back to, any insurance carrier any insurance or reinsurance provided by the Secretary under this chapter.

#### **“Sec. 44307. Revolving fund**

“(a) Existence, disbursements, appropriations, and deposits. — (1) There is a revolving fund in the Treasury. The Secretary of the Treasury shall disburse from the fund payments to carry out this chapter.

“(2) Necessary amounts to carry out this chapter may be appropriated to the fund. The amounts appropriated and other amounts received in carrying out this chapter shall be deposited in the fund.

“(b) Investment. — On request of the Secretary of Transportation, the Secretary of the Treasury may invest any part of the amounts in the revolving fund in interest-bearing securities of the United States Government. The interest on, and the proceeds from the sale or redemption of, the securities shall be deposited in the fund.

“(c) Excess amounts. — The balance in the revolving fund in excess of an amount the Secretary of Transportation determines is necessary for the requirements of the fund and for reasonable reserves to maintain the solvency of the fund shall be deposited at least annually in the Treasury as miscellaneous receipts.

“(d) Expenses. — The Secretary of Transportation shall deposit annually an amount in the Treasury as miscellaneous receipts to cover the expenses the Government incurs when the Secretary of Transportation uses appropriated amounts in carrying out this chapter. The deposited amount shall equal an amount determined by multiplying the average monthly balance of appropriated amounts retained in the revolving fund by a percentage that is at least the current average rate payable on marketable obligations of the Government. The Secretary of the Treasury shall determine annually in advance the percentage applied.

**“Sec. 44308. Administrative**

“(a) Commercial Practices. — The Secretary of Transportation may carry out this chapter consistent with commercial practices of the aviation insurance business.

“(b) Issuance of Policies.—The Secretary may issue insurance policies to carry out this chapter. The Secretary may prescribe the forms, amounts insured under the policies, and premiums charged. Any such policy may authorize the binding arbitration of claims made thereunder in such manner as may be agreed to by the Secretary and any insurance carrier that may be responsible for any part of a loss to which such policy relates. The Secretary may change an amount of insurance or a premium for an existing policy only with the consent of the insured.

“(c) Submission of a Claim.--Each claim under insurance authorized by this chapter, shall be submitted for a decision no later than 2 years after the date of the accrual of the claim.

“(d) Decision on a Claim.—Not later than one year after receipt of a claim, the Secretary shall—

- (1) issue a decision; or
- (2) notify the contractor of a reasonable time within which a decision will be issued.

“(e) Automatic Denial of a Claim.--Failure to issue a decision on a claim within the required time period is deemed to be a decision denying the claim and authorizes an appeal or action on the claim as provided in Section 44309.

“(f) Payment of a Claim.--For a claim under insurance authorized by this chapter, the Secretary may —

“(1) settle and pay the claim made for or against the United States Government;

“(2) pay the amount of a binding arbitration award authorized under subsection (b) of this section; or

“(C) pay the amount of a judgment entered against the Government.

“(g) Underwriting Agent. — (1) The Secretary may, and when practical shall, employ an insurance carrier or group of insurance carriers to act as an underwriting agent. The Secretary may use the agent, or a claims adjuster who is independent of the underwriting agent, to adjust claims under this chapter, but claims may be paid only when approved by the Secretary.

“(2) The Secretary may pay reasonable compensation to an underwriting agent or a broker for servicing insurance the agent writes for the Secretary.

“(3) The Secretary may pay an insurance broker or other person acting in a similar capacity reasonable compensation for arranging insurance when the Secretary directly insures any part of the risk.

“(4) Compensation under this subsection may include payment for reasonable expenses incurred by the agent or broker but may not include a payment by the agent or broker for stimulation or solicitation of insurance business.

“(h) Budget. — The Secretary shall submit annually a budget program for carrying out this chapter

“(i) Accounts. — The Secretary shall maintain a set of accounts for audit under chapter 35 of title 31. Notwithstanding chapter 35, the Comptroller General shall allow credit for expenditures under this chapter made consistent with commercial practices in the aviation insurance business when shown to be necessary because of the business activities authorized by this chapter.

**“Sec. 44309. Civil actions against the United States**

“(a) Actions Against United States. — A person may bring a civil action against the United States Government only when —

“(1) a final decision has been issued on a claim for a loss insured under this chapter;  
and

“(2) the suit is filed not later than one year after receipt of the final decision.

“(b) Who May Bring Suit.—Suit may be brought by—

“(1) the party insured under this chapter; or

“(2) a person subrogated under a contract between the person and a party insured under this chapter (other than section 44305) to the rights of the insured party against the United States Government, and the person has paid to the insured party, with the approval of the Secretary of Transportation, an amount for a physical damage loss that the Secretary has determined is a loss covered by insurance issued under this chapter (other than section 44305).



“(c) Limitation. — The civil action provided for in subsection (a) shall be exclusive of any other civil action or proceeding by reason of the same subject matter against an officer, agent, or employee of the United States.

“(d) Jurisdiction. The district courts of the United States are granted exclusive jurisdiction to entertain a civil action authorized by this section.

“(e) Venue and joinder. — (1) A civil action under subsection (a) of this section may be brought in the judicial district for the District of Columbia or in the judicial district in which the plaintiff or the agent of the plaintiff resides if the plaintiff resides in the United States. If the plaintiff does not reside in the United States, the action may be brought in the judicial district for the District of Columbia or in the judicial district in which the Attorney General agrees to accept service.

“(2) An interested person may be joined as a party to a civil action brought under subsection (a) of this section initially or on motion of either party to the action.

“(f) Interpleader. — (1) If the Secretary admits the Government owes money under an insurance claim under this chapter and there is a dispute about the person that is entitled to payment, the Government may bring a civil action of interpleader in a district court of the United States against the persons that may be entitled to payment. The action may be brought in the judicial district for the District of Columbia or in the judicial district in which any party resides.

“(2) The district court may order a party not residing or found in the judicial district in which the action is brought to appear in a civil action under this subsection. The order shall be served in a reasonable manner decided by the district court. If the court decides an unknown person might assert a claim under the insurance that is the subject of the action, the court may order service on that person by publication in the Federal Register.

“(3) Judgment in a civil action under this subsection discharges the Government from further liability to the parties to the action and to all other persons served by publication under paragraph (2) of this subsection.”.

### **SEC 3. EFFECTIVE DATE.**

The provisions of this Act shall become effective on October 1, 2014, or upon enactment, whichever is later.

## **Sectional Analysis for the “Federal Aviation Insurance Reauthorization Act of 2014”**

**Section 1. Short Title.** This section states that this act may be cited as the “Federal Aviation Insurance Reauthorization Act of 2014.”

**Section 2. Amendments to Chapter 443 of Title 49, United States Code.** This section describes the revised sections within chapter 443 of title 49 as follows:

### **Section 44301: Definitions**

This section continues, in general, the definitions provided in the prior legislation. The definition of “insurance carrier” has been extended to allow any business regularly providing insurance to participate in the revised program. The prior law included “in a State” as a limiter on the businesses that could provide insurance.

### **Section 44302: Indemnification**

This section substantially modifies the prior program for providing aviation insurance. This section limits coverage to indemnification for limited causes. The causes of loss identified in the section is an exhaustive listing of the perils permitted to be indemnified; therefore, the Secretary may provide coverage for fewer than all enumerated causes, but is prohibited from providing coverage for any causes not listed. Coverage is only available for carriers that had coverage as of date of enactment or those providing regularly scheduled passenger or cargo service. The prior law did not limit coverage to regularly scheduled carriers, although the implementation by the Secretary of Transportation did include such a limitation for new entrants into the program. This section statutorily implements the Secretary’s policy and in so doing, makes it a legal mandate. This section also eliminates the requirement that new policies for air carriers who had coverage as of June 19, 2002, be issued under no less favorable terms than existed for those policies in 2002. This section also sets the maximum indemnification amount as \$2,000,000,000 plus the air carrier’s third party commercial coverage. In setting that maximum, the government’s exposure will be subject to annual limits as is customary in commercial insurance markets. This section also requires the Secretary to charge the air carriers an amount based on consideration of the risk in an amount sufficient to cover the anticipated claims. The section does not mandate what methodology the Secretary should use in determining the amount and provides the Secretary with the discretion to use whatever methodology will most likely result in sufficient collections. It is assumed that the Secretary, with reasonable notice, may from time to time adjust the methodology based on experience with the program.

**Section 44303: Temporary insurance**

The revised provision is intended to eliminate the aviation insurance program as it existed prior to enactment of this Act, including the sunset provisions. Appreciating that there may be unforeseen and catastrophic situations where the continued operation of the National Airspace System requires immediate government involvement in the aviation insurance market, this section authorizes the Secretary to implement the prior program for a limited period of time. This time is expected to allow for the markets to stabilize or for Congress to enact new legislation, if needed. In the event that temporary insurance is determined necessary, the section explicitly eliminates the cap placed on the premiums by the prior 49 USC §44302(f)(2).

**Section 44304: Insurance Coverage**

This section establishes the types of property that may be insured and is unchanged from the prior law with the exception of the prior 49 USC §44303(b) which is deleted. The language of subsection (b) allowed for unbounded liability of the government. It is anticipated that in the event of a unforeseen and catastrophic occurrence that would give rise to the liability included in the prior subsection, the Congress will enact legislation appropriate to the event.

**Section 44305: Insuring United States Government Property**

The section allows the Secretary to reinsure any insurance provided under the program and is effectively unchanged from the prior law at 49 USC §44305.

**Section 44306: Reinsurance**

The section allows the Secretary to reinsure any insurance provided under the program and is unchanged from the prior law at 49 USC §44304.

**Section 44307: Revolving fund**

The section establishes a revolving fund in the Treasury and is unchanged from the prior law at 49 USC §44307.

**Section 44308: Administrative**

The section provides various requirements for administering the program and reiterates the Secretary's authority to carry out the program consistent with commercial practices of the aviation insurance business. It is substantially similar to prior law at 49 USC §44308.

**Section 44309: Civil Actions Against the United States**

The section provides for a waiver of sovereign immunity to bring suit against the United States regarding implementation of the program. It is substantially similar to prior law at 49 USC §44309.

**Section 3. Effective Date.** This section states that the provisions of this Act shall become effective on October 1, 2014, or upon enactment, whichever is later.